

## Federal Communications Commission

## § 21.23

to render the application defective and will subject it to dismissal.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 5294, Feb. 20, 1987; 52 FR 37779, Oct. 9, 1987; 55 FR 46009, Oct. 31, 1990; 58 FR 11797, Mar. 1, 1993; 61 FR 26674, May 28, 1996]

### **§21.21 Inconsistent or conflicting applications.**

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, the applicant's successor or assignee, or on behalf or for the benefit of the same applicant, the applicant's successor or assignee.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37779, Oct. 9, 1987]

### **§21.22 Repetitious applications.**

(a) Where an applicant has been afforded an opportunity for a hearing with respect to a particular application for a new station, or for an extension or enlargement of a service or facilities, and the Commission has, after hearing or default, denied the application or dismissed it with prejudice, the Commission will not consider a like application involving service of the same kind to the same area by the same applicant, or by the applicant's successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of the Commission's order. The Commission may, for good cause shown, waive the requirements of this section.

(b) Where an appeal has been taken from the action of the Commission denying a particular application, another application for the same class of station and for the same area, in whole or in part, filed by the same applicant or by the applicant's successor or assignee, or on behalf of or for the benefit of the original parties in interest, will not be considered until the final disposition of such appeal.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37779, Oct. 9, 1987]

### **§21.23 Amendment of applications.**

(a)(1) Any pending application may be amended as a matter of right if the application has not been designated for hearing, or for comparative evaluation

pursuant to §21.35, or for the random selection process, provided, however, that the amendments must comply with the provisions of §21.29 as appropriate and the Commission has not otherwise forbidden the amendment of pending applications.

(2) A Multipoint Distribution Service application tentatively selected for qualification review by the random selection process may be amended as a matter of right up to 14 days after the date of the public notice announcing the tentative selection, provided, however, that the amendments must comply with the provisions of §21.29 as appropriate and the Commission has not otherwise forbidden the amendment of pending applications.

(3) Provided, however, applications may not be amended if the amendments seek more than a *pro forma* change of ownership or control (bankruptcy, death or legal disability) of a pending Multipoint Distribution Service application and any amendment or application will be dismissed if the amendment or application seeks more than a *pro forma* change of ownership or control.

(b) Requests to amend an application designated for hearing or for comparative evaluation or for tentative selection for qualification review by the random selection process may be granted only if a written petition demonstrating good cause is submitted and properly served on the parties of record, except that Multipoint Distribution Service applications tentatively selected in a random selection process may be amended as a matter of right as provided in paragraph (a) of this section. Provided, however, requests to amend applications will not be granted that seek more than a *pro forma* change of ownership or control (bankruptcy, death or legal disability) of a pending Multipoint Distribution Service application and any application seeking more than a *pro forma* change of ownership or control will be dismissed.

(c) The Commission will classify amendments on a case-by-case basis. Whenever previous amendments have been filed, the most recent amendment will be classified by reference to how the information in question stood as of

the latest Public Notice issued which concerned the application. An amendment will be deemed to be a major amendment subject to § 21.27 and § 21.31 under any of the following circumstances:

(1) If in the Multipoint Distribution Service, the amendment results in a substantial modification of the engineering proposal such as (but not necessarily limited to):

(i) A change in, or addition of, a radio frequency channel;

(ii) A change in polarization of the transmitted signal;

(iii) A change in type of transmitter emission or an increase in emission bandwidth of more than ten (10) percent;

(iv) A change in the geographic coordinates of a station's transmitting antenna of more than ten (10) seconds of latitude or longitude, or both;

(v) Any change which increases the antenna height by 3.0 meters (10 feet) or more;

(vi) Any technical change which would increase the effective radiated power in any direction by more than one and one-half (1.5) dB; or

(vii) Any changes or combination of changes which would cause harmful electrical interference to an authorized facility or result in a mutually exclusive conflict with another pending application.

(2) [Reserved]

(3) If the amendment would convert a proposal, such that it may have a significant impact upon the environment under § 1.1307 of the Commission's rules, which would require the submission of an environmental assessment, see § 1.1311 of this chapter, and Commission environmental review, see §§ 1.1308 and 1.1312 of this chapter.

(4) If the amendment results in a substantial and material alteration of the proposed service.

(5) If the amendment specifies a substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 [47 U.S.C. 310(d)]. Such a change would not be considered major

where the assignment or transfer of control is for legitimate business purposes other than the acquisition of applications.

(6) If the amendment, or the cumulative effect of the amendment, is determined by the Commission otherwise to be substantial pursuant to section 309 of the Communications Act of 1934.

(d) The applicant must serve copies of any amendments or other written communications upon the following parties:

(1) Any applicant whose application appears on its face to be mutually exclusive with the application being amended, including those applicants originally served under § 21.902;

(2) Any applicant whose application has been found by the Commission, as published in a public notice, to be mutually exclusive with the application being amended; and

(3) Any party who has filed a petition to deny the application or other formal objection, when that petition or formal objection has not been resolved by the Commission.

(e) The Commission may waive the service requirements of paragraph (e) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome. Requests for waiver shall be served on petitioners. Oppositions to the petition may be filed within five (5) days after the petition is filed and shall be served on the applicant. Replies to oppositions will not be entertained.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

[44 FR 60534, Oct. 19, 1979, as amended at 46 FR 23450, Apr. 27, 1981; 50 FR 5992, Feb. 13, 1985; 50 FR 45614, Nov. 1, 1985; 52 FR 37779, Oct. 9, 1987; 55 FR 20397, May 16, 1990; 56 FR 57816, Nov. 14, 1991; 58 FR 11797, Mar. 1, 1993; 58 FR 44894, Aug. 25, 1993; 61 FR 26674, May 28, 1996]